

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BUEHLER LUMBER COMPANY

and

Case 6--CA--16734

LOCAL 502, INTERNATIONAL UNION OF
ELECTRONIC, ELECTRICAL, TECHNICAL, SALARIED
AND MACHINE WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 19 September 1983,¹ the General Counsel of the National Labor Relations Board issued a complaint 19 October against Buehler Lumber Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Company has failed to file an answer.

On 10 February 1984 the General Counsel filed a Motion for Summary Judgment. On 16 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ All subsequent dates refer to 1983 unless otherwise indicated.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all of the allegations in the [c]omplaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Attorney, by letter dated 7 November, notified the Company that, unless an answer was received immediately, a Motion for Summary Judgment would be filed.²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.³

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Pennsylvania corporation, is engaged in the operation of a lumber mill as well as the retail and nonretail sale of lumber and related products at its facility in Ridgway, Pennsylvania, where it annually sells and ships directly to points outside the Commonwealth of Pennsylvania products, goods, and materials valued in excess of \$50,000, and where it annually de-

² On 2 February 1984 counsel for the General Counsel attempted to telephone the Respondent's counsel to remind the Respondent of its obligation to file an answer. The Respondent's counsel did not return the telephone call.

³ In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

rives gross revenues in excess of \$500,000. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

On or about 15 July or 15 August the Respondent polled its employees regarding their union membership, activities, and sympathies. On or about 14 September the Respondent threatened to discharge employees if they voted for the Union in a representation election scheduled for 15 September. By such acts, the Respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed them in Section 7 of the Act. The Respondent thereby has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Further, on or about 16 September the Respondent terminated employees Dwayne A. Carlson, Ronald C. Edgar, Robert Gorton, Rodney D. Himes, and Darryl L. Oknefski because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities. By such acts, the Respondent discriminated, and is discriminating, in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization. The Respondent thereby has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) of the Act.

Conclusions of Law

1. By polling employees regarding their union membership, activities, and sympathies, and by threatening to discharge employees if they voted for the Union in a representation election, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By terminating employees because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall also order that the Respondent offer the five unlawfully terminated employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them by payment to them of sums equal to the amounts they normally would have earned as wages from the date of the their terminations to the date of the Respondent's offers of reinstatement, less net interim earnings, in accordance with the formula set forth in F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in Florida

Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).

ORDER

The National Labor Relations Board orders that the Respondent, Buehler Lumber Company, Ridgway, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Polling employees regarding their union membership, activities, and sympathies, and threatening to discharge employees if they vote for the Union in a representation election.

(b) Terminating employees because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Dwayne A. Carlson, Ronald C. Edgar, Robert Gorton, Rodney D. Himes, and Darryl L. Oknefski immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the section herein entitled "Remedy."

(b) Remove from its files any reference to the unlawful discharges and notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Ridgway, Pennsylvania, copies of the attached notice marked "'Appendix.'"⁴ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁴ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 30 April 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT poll employees regarding their union membership, activities, and sympathies, and WE WILL NOT threaten to discharge employees if they vote for the Union in a representation election.

WE WILL NOT terminate employees because they joined, supported, or assisted the Union and engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Dwayne A. Carlson, Ronald C. Edgar, Robert Gorton, Rodney D. Himes, and Darryl L. Oknefski immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits resulting from their termination, less any net interim earnings, plus interest.

WE WILL notify each of them that we have removed from our files any reference to the discharge and that the discharge will not be used against him in any way.

BUEHLER LUMBER COMPANY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1501 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.